THE INDETERMINATE PERMIT AS A SATISFACTORY FRANCHISE

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The Wisconsin legislatures of 1905, 1907 and 1909 worked out and put into effect as laws of the State, a system for the control of public service corporations which appears to be more complete and practicable than has so far been developed by any other State in this country. One feature of this legislation is the "Indeterminate Permit." The law relating to the "Indeterminate Permit," taken together with the other legislation relating to public service corporations, provides a method for dealing with those matters heretofore attempted to be covered by the municipally granted franchise contract, which, in the opinion of the writer, approaches very nearly an entirely satisfactory solution of the franchise problem.

The Committee on Public Relations of the American Street and Interurban Railway Association in its annual report at the convention held October, 1907, refers to the Wisconsin "Indeterminate Permit" as "a most important provision and one far in advance of anything heretofore attempted in any legislation in this country." "The Outlook" for May 1908, commenting upon the bill pending in the New York Legislature in relation to franchises for subways, refers to the Wisconsin law as follows:

> The consistency and logicalness of the Wisconsin plan (whatever may be its practicability) is in the strongest contrast to the endless experimentations, reversals and legal blind alleys which have characterized the practice in the State of New York.

In the report of the New York Public Service Commission, First District, for the year ending December 31, 1908, appears a very discriminating and carefully considered article by the Hon. Milo R. Maltbie, one of the commissioners, entitled "The Indeter-

minate Franchise for Public Utilities." Commissioner Maltbie carefully weighs the advantages and disadvantages of the short-term franchise, the perpetual franchise and the indeterminate franchise, and concludes in favor of the latter form as the most satisfactory method of dealing with the problem.

The best way to secure an intelligent understanding of the merits of the Wisconsin legislation upon this question is to take up, one at a time, the considerations necessarily involved in any franchise and ascertain whether the Wisconsin method is better or worse than other methods which have been employed.

In the first place, the subject-matter of the franchise should be clearly understood. The right conferred by a State upon a group of individuals to do business in a corporate capacity is sometimes referred to as a franchise, and correctly so, being a special privilege granted by the State. The franchise which we are now considering, however, is the special privilege enjoyed by the electric railway corporation to occupy the public streets and highways with its rails, poles, wires and other equipment, and to run cars over and upon such streets and highways and collect fares from the public.

It should also be borne in mind that the right to use the streets of a city or other municipality is not an asset owned outright by the city. The control of streets and highways is primarily in the State and not in any municipal corporation. Cities, towns, villages, etc., are municipal corporations, created by the State for the purpose of enabling it to carry out its functions of government. They are agencies of the State for particular purposes. It has been usual for the States in our country to delegate to their cities and other municipal corporations general control and regulation of those streets and highways which lie within their boundaries, and statutes are in force in most of the States authorizing municipalities to grant to street railway corporations the special privilege of using the streets for the purpose of such street railways; but without such specially delegated power from the State a municipality has no right to grant to a street railway company any special privileges in the streets. This was early laid down by the Supreme Court of the United States in the case of *People's Railroad* v. *Memphis Railroad,* 10 Wall., 38.

The general nature of a franchise as a special privilege derived from the State was defined by the Supreme Court of the United

States in the case of *Bank of Augusta* v. *Earle,* 13 Peters, 519, where the Court said: "It is essential to the character of a franchise that it should be a grant from the sovereign authority, and in this country no franchise can be held which is not derived from the law of the State." It is important to bear in mind the nature of a franchise, because street privileges have very often been regarded by cities as assets to be bargained away for a consideration, and it is this *contract* view of street railway franchises which is at the root of most of the difficulties heretofore experienced by cities when considering franchise matters. The control of the streets, then, is primarily in the State, and a franchise to use the streets is a special privilege derived from the State, usually through the agency of the municipality.

The first and fundamental difficulty with the ordinary form of street railway franchise has been that it was entered into on the theory that it was a contract between the municipality and the street railway company. In fact, it contained all the ordinary elements of a contract and has been upheld by the Supreme Court of the United States as being a real contract, the obligation of which could not be impaired. (*City Railway Company* v. *Citizens' Street Railway Company,* 166 U. S., 557.)

The reason why this contract theory of a franchise has worked such harm is that it has formed the politician's opportunity to make favor with the people and take money from the corporations. In the early days of street railway building, the particular provisions of the franchises were not considered of great importance either by the companies or the municipalities, because, on the one hand, the cost of constructing a horse railroad was insignificant in comparison to the cost of constructing and equipping an up-to-date, high-grade electric railway, and, on the other, because the municipalities were eager for the service.

When the original grants expired, however, and the electric railways found themselves about to occupy the position of trespassers upon the streets unless their franchises were renewed, often facing bankruptcy as an alternative to procuring a renewal of their franchises, the era of franchise bargaining begun. Here was the opportunity of the corrupt politician, and this opportunity was availed of to the utmost. The public was taught to believe that the street railways had derived enormous profits from the use of the

streets, and an entirely erroneous value was placed upon the profitableness of franchises in the public mind.

Municipal ownership was agitated throughout the country, but in the end the franchises were usually extended after the political powers had been dealt with by the corporations. New contract franchises were entered into, imposing the greatest variety of obligations and conditions upon the railways. Often these obligations are utterly unenforcible, and while they perhaps serve the public as a club over the railways, on the other hand they afford an excellent argument for the railways to use against furnishing any needed additional facilities which might happen to have been left out of the contract.

Under the contract form of granting franchises, the railway companies are of necessity bound to negotiate and treat with the municipal authorities, and too often this must be done through the medium of some unscrupulous political power. There is not the slightest doubt, however, that the street railway managers, who are obliged to treat in this way for their very existence, do so with the utmost distaste, and would welcome any change in the law which would relieve them from the necessity of obtaining their essential rights in this manner. The trouble has been that the state governments have abandoned entirely to the cities the whole question of street railway franchises and regulation, and that in those municipalities where the power of the political bosses has been supreme the sole question about the franchise has been the amount of money that can be extorted from the railway company.

There are other fundamental objections to the contract theory of franchises. Many of these are economic reasons. In the first place, one of the terms about which a controversy almost invariably rages is the duration of the franchise. In many States the propaganda of limited franchises has been urged as if it were the sole remedy for existing conditions. Now, the question of the duration of an electric railway franchise is of vital importance both to the street railway and to the public. It is not of vital importance to the street railway that it should have a perpetual franchise, but it is necessary that it should have a franchise of sufficiently long duration so that, at the expiration of it, almost the entire investment shall have been refunded to the stockholders, or shall be in the form of an available sinking fund which can be refunded to them.

The scrap value of an electric railway taken up and sold, apart from its use in the conduct of the electric railway business, is but a small per cent. of its original cost, even though the property may have been maintained continuously in the highest state of efficiency. It is, therefore, obvious that if the franchise be not renewed at its expiration a tremendous loss will be sustained by the stockholders in the enterprise. This is an economic loss, by which no one profits. It does not do the public any good to have the stockholders lose their money, even if this loss could be put upon them.

This aspect of the limited term franchise is really not honestly faced either by street railway corporations or by the public in the majority of cases. It is felt that some arrangement will be made at the expiration of the franchise for its renewal, and that it really is not necessary to provide a sinking fund to pay back the capital invested at the termination of the franchise. The result of neglecting to provide such a sinking fund has been that in a great many cases corporations have been brought face to face with bankruptcy at the expiration of their franchises, and in one very notable case, that of the Cleveland Electric Railway Company, it was necessary to place the concern in the hands of a receiver for upward of a year, pending negotiations for the renewal of a franchise.

The provision of a sinking fund out of earnings necessitates the maintenance of a high rate of fare which must come out of the pockets of the railway patrons. It will ordinarily also require the limiting of operating expenses and extensions to the lowest possible point resulting in inadequate facilities for the transportation of the public. This is the price which the public pays for its insistence upon a short-term franchise.

There is ample evidence available to support these conclusions. Mr. Charles T. Yerkes, then president of the Chicago Consolidated Traction Company, stated in a public address before the American Street and Interurban Railway Association in October, 1899, that "The most important matter in regard to street railway securities is the length of the charter (meaning street franchise) under which they are operating. This question is of as much importance to the people as it is to the street railways themselves."

Mr. John I. Beggs, president of the Milwaukee Electric Railway and Light Company, at the same meeting summed up the case of the street railways most effectively as follows: "I want to know

what provision for the payment of these securities there is when our short-term franchises have expired? The franchise of our own property has a little over twenty years to run, and yet we are discussing it as they are in some other sections of the country, trying in advance to make calculations to know how much we are justified in putting into that property; how long we have in which to get a return from it. I do not know that it is being done so methodically by other companies—it may be. We have calculated, and I believe you will recognize that it is a proper charge against earnings, that you have a right to set aside this amount before the public can demand that you shall give a greater accommodation for the carrying of a passenger twelve or fifteen miles, to which Mr. Yerkes has alluded, or that the fare should be reduced. We are setting aside a certain amount for this purpose, and we want to know what is to be paid to those who may succeed us in our investment in these properties, and if, after the twenty years have expired, they will simply have turned over to them out of which to recoup the investment, a pile of junk on the streets, that the city wants removed in order that it may make a better dicker with some one else . . . I desire to throw out in connection with this paper the thought that we want to make some provision for the time that these bonds will mature. . . . I desire, gentlemen, to impress upon you the necessity, in order to make these securities safe, of having the public take them, as they do our water works and gas stocks, and in nearly all of which their charters are perpetual. The longer time our franchises have to run, the more you can afford to spend upon the betterment of your properties."

The standpoint of capitalists in relation to limited term franchises was expressed by Mr. August Belmont, of New York City, in an address before the Brooklyn League, delivered June 6, 1908, discussing the refusal of Governor Hughes to sign the Robinson Bill passed by the New York State Legislature granting long-term franchises for subways. Mr. Belmont said:

"Private capital cannot be invested with profit in any proposition under a short-term franchise agreement. You can put out of your mind any idea of private capital interesting itself in short-term franchise propositions. You must insure at least the return of the capital invested."

The dangers of limited term franchises have been exceedingly

well demonstrated in the case of the Cleveland street railways. The franchise of this company expired by limitation and a new franchise was granted by the Cleveland City Council on April 27, 1908. This franchise contained elaborate provisions relating to the regulation of the street railway by the city, but it was rejected by the voters in the referendum election held October 22, 1908; $2,000,000 of bonds were coming due in the summer of 1909, and with no definite plans ahead for adjustment of the franchise question, the company, in splendid operating condition, was forced into the hands of a receiver.

Another subject very frequently attempted to be covered by the ordinary municipally granted franchise contract is the rate of fare to be charged. The trouble with providing for rates of fare in this manner is that human foresight is limited. In this age of scientific development, it is utterly impossible to lay down a fixed charge for electric railway transportation which shall continue inflexible for a long period of years, and have such a fixed rate continue to be equitable to both the public and to the railway company. It is entirely possible that such improvements in the form of the service may be brought about that the public would gladly pay the increased cost for increased facilities. On the other hand, such technical improvements may be made in the method of furnishing the service that it can be given for a very much lower price. No one can possibly foresee these contingencies for a period of twenty or thirty years, and it is folly for a municipality and a street railway company to attempt to enter into a contract definitely fixing rates for a long term of years.

It is probable that no more careful study has ever been given to the fare question than has been expended in the city of Cleveland. For years Mayor Johnson, of that city, attempted to procure a three-cent fare. The franchise which went into effect February 17, 1910, and which was in the usual contract form, attempted by a series of most elaborate provisions to regulate street railway fares during the twenty-five-year period of the franchise. A sliding scale of rates was adopted, ranging from a maximum of four cents cash, seven tickets for twenty-five cents, to a minimum of two cents cash with one cent for a transfer and one cent rebate. The fare was to be adjusted from time to time, so as to allow a fixed return on the capital invested. The company had not been operat-

ing under this franchise a week before a suburb was annexed to the city, and the question was raised whether the fares fixed by the franchise should apply in this annexed suburb, or whether the company was entitled to maintain the old five-cent rate in the suburb.

The attempt to fix rates in advance for a long period of years is based upon an erroneous conception of the proper method of dealing with electric railways. It regards these companies as speculative enterprises, attempting to make large profits through the exploitation of the people, and necessitating a bargain, or, as Mr. Beggs puts it, a "dicker" every time a franchise is granted, and, while attempting to lay down a rule for the future, in reality it regards only the present.

Let us sum up the case which has thus been made against the municipally granted franchise. We have found, in the first place, that the contract theory is in itself wrong, because it allows the municipality to treat the granting of franchises in its streets as an asset to be bargained or dickered with, disregarding the fact that the streets belong to the entire public of the whole State and not merely to the inhabitants of the city.

This dickering or bargaining away of street rights becomes part of the stock in trade of the professional politician with whom the railway company is forced to deal, in order to preserve its very existence. The most important terms of such a contract, viz., the duration of the franchise and the rates of fare, are matters which experience shows cannot be dealt with and fixed in advance by any contract, however carefully drawn.

The limited term franchise stunts the growth of our street railway systems to the great disadvantage of the public, by making capital reluctant to embark in such a precarious enterprise both as regards the construction of new lines and the financing of necessary extensions and improvements. The public lose because of the necessity of keeping up fares and keeping down operating expenses, causing a lowering in quality of service in order to provide a fund to make good the possible loss to be sustained at the expiration of the franchise, because of the failure to procure a satisfactory renewal. A final objection is the possible bankruptcy of the company and loss of legitimate investment upon the expiration of limited franchises, where the companies have not been able, or have not had

the foresight, to lay aside a fund to repay the investors on the expiration of the limited franchise.

The general recognition of the disadvantages of municipally granted franchises has led to numerous attempts to find a satisfactory solution of the problem. The State of Massachusetts has instituted a system of franchise grants which has proved, on the whole, fairly satisfactory in operation. In this State street privileges are not treated as contracts. The word used is not "franchise," but "location," and the local authorities are authorized by statute to grant "locations" in the streets for street railway purposes. These grants are subject, however, to the supervision of the Board of Railroad Commissioners, and no street location is valid until the commissioners "after public notice and a hearing shall certify that such location is consistent with the public interests." These locations are not granted for any particular period, and are revocable by the local authorities, subject, nevertheless, to the approval of the railroad commissioners. The statute provides that the municipalities in granting the locations may prescribe how the tracks shall be laid, what kind of rails, poles, wires and other appliances shall be used, and may "impose such other terms, conditions and obligations incidental to and not inconsistent with the objects of the street railway company as the public interests may in their judgment require." It has, however, been the practice in Massachusetts to make these street locations very simple, without attempting to impose elaborate restrictions and burdens. The result of this method of conferring street rights has been most admirable. A committee appointed by the Legislature of Massachusetts reported in 1900, after a most elaborate examination of franchise conditions in the United States and in Europe, that the simple street location, perpetual but revocable, theretofore in force in Massachusetts was the most satisfactory form of franchise which they had found. This committee found that the service throughout Massachusetts was highly satisfactory, and that street railway securities had reached the level of investments and were not regarded as a speculation. The report says that the limited duration franchise has been productive of "dissensions, poor service, scandals and unhealthy political action."

The State of Wisconsin has, however, taken the most advanced ground in the field of street railway legislation and regulation.

After careful study and investigation a body of law has been enacted providing a comprehensive and logical scheme of legislation for the general control of electric railways. The legislature in placing this body of law upon the statute books has broken away from the old theory that a franchise is a contract between the municipality and the company, in which the relations between the two are to be fixed once and for all by the terms of the franchise (including the duration of the franchise, the rates of fare, the compensation to be made, and the innumerable other burdens and restrictions attempted to be placed upon the railways), and has substituted the rational theory that street privileges are grants from the States, and, being conferred for a public purpose, are subject to regulation by the public, when, and as such regulation shall be required.

The statute directly providing for the Indeterminate Permit is chapter 578, Laws of 1907, which went into effect July 13, 1907. This provides, first, that every license, permit or franchise thereafter granted to any street railway company shall have the effect of an Indeterminate Permit, and that such permit shall continue in force until the municipality in which the greater part of the street railway company's property is situated shall purchase that property, and that any such municipality shall have the authority to make such a purchase, and every street railway company shall be required to sell its property to the municipality. The price to be paid for the property is to be determined by the railroad commission. Second, that any street railway company operating under an existing license, permit or franchise shall have the right to acquire, in lieu thereof, an Indeterminate Permit by filing a written declaration that it surrenders such license, permit or franchise. The acceptance of such an Indeterminate Permit shall constitute a waiver on the part of the street railway company of the right to insist upon the fulfilment of any contract theretofore entered into with the municipality relating to any rate, fare, charge or service regulated by the railroad commission. Third, that the acceptance of an Indeterminate Permit shall constitute the consent by the company to the future purchase of its property by the municipality.

The great advance made by this particular portion of the electric railway legislation of Wisconsin is that it eliminates the necessity of fixing a term, either limited or perpetual, for the duration of street privileges. The street privileges continue until the prop-

erty is taken over by the city. This provision, it will be seen, eliminates all those very serious objections, stated above, arising in connection with a limited franchise. It is not necessary for the corporation to become involved in local politics and to deal with the local boss upon the expiration of the franchise. The company is not under the necessity of attempting to raise rates and decrease operating expenses, and consequently skimp on the service, in order to provide a sinking fund sufficient to make good the enormous losses likely to be sustained by the company when its franchise expires. This great charge, which otherwise would have to be met either by the traveling public or by the investing stockholders, can be used for lowering rates and improving the service. The company does not have to face the possibility of being required to take up its tracks and sell off its expensive electric plant practically as junk at the expiration of the franchise, because the franchise does not expire until compensation is made to the company for its property. The Indeterminate Permit, therefore, eliminates the necessity of political activity on the part of the company; it eliminates the possibility of the corrupt extortion and use of money for the renewal of the expiring privileges, and it avoids the enormous economic loss necessarily sustained in rendering it impossible to use the property of the company for street railway purposes. The statute providing for the Indeterminate Permit, therefore, solves the problem of limited term franchises.

But there is more to an ordinary franchise than the question of how long it shall last. There are the questions of rates of fare, method of operation, schedules of running cars, method of construction, the providing of proper terminal facilities, the safeguarding or elimination of grade crossings, and the providing of publicity in relation to the company's affairs. All these matters the Wisconsin legislation very wisely eliminates from the field of negotiation between municipalities and street railway companies. No attempt is made to lay down fixed and inflexible rules dealing with all these matters, as has been attempted with such unfortunate results in the municipally granted franchise. All these matters are placed in the control of a Board of Railroad Commissioners, who are empowered to deal with them from time to time when and as the necessity for action arises.

This railroad commission is, in the first place, a non-political

body. It is composed of three men appointed by the governor of the State for the term of six years. One of the commissioners is to have a general knowledge of railroad law, and the other two are to have a general understanding of matters relating to railroad transportation. They must not be financially interested in railroads, and they must not serve on any committee of any political party. They are to devote their entire time and attention to their duties as railroad commissioners. They receive a salary of $5000 per annum. They are authorized to employ a secretary at a good salary, and such clerks, stenographers, experts and temporary employes as they may require. They are also entitled to employ counsel to represent them and advise them. For the purpose of carrying out their duties they are entitled to make requisition upon any unappropriated moneys in the treasury of the State. It will be seen from the constitution of this commission and from the liberal provision made for necessary expert and clerical assistance, that it will be able to acquire information relating to street railways and experience in dealing with them which no single municipality could afford to provide for. In the new Cleveland franchises referred to above, a street railway commissioner at a salary of $12,000 a year is provided for, but though it is stated that he is to be the representative of the city, his salary is required to be paid by the street railway company, which puts him in the unfortunate position of serving one master and drawing his pay from another.

In the next place, the railroad commission of Wisconsin is authorized, empowered and required to obtain such information in relation to the electric railways as will enable them to act intelligently upon the questions presented to them. They are authorized and empowered to deal with the question of rates. In recent times it has come to be understood that the electric railway business, in cities at any rate, and, indeed, electric transportation throughout the country, is most successfully dealt with upon the theory that such businesses are natural monopolies, and that they cannot be made to compete by any statutory requirement. It has become evident that the economic law of supply and demand applicable to competing enterprises is not satisfactorily applicable to monopolies of this sort. In some of the most modern legislation, therefore, the interests of the public in the charges to be made for the service furnished by street railways have been safe-

guarded by limiting the amount of profits which the street railways shall be entitled to make. The old method of fixing the fare in advance by the franchise contracts has given way to the modern theory of regulating rates from time to time as the necessity for such regulation arises. This theory has received very complete and careful application in the Wisconsin legislation.

In order to enable the railroad commission to determine and fix proper rates for transportation, they are required to ascertain the cost of every railroad property in the State, and to enable them to do this, they are entitled to call upon the railways for the most complete information, including statements, reports, and the personal attendance of employes and officers for examination. The commission is required to ascertain also, through its experts, the amount it would cost to replace all the physical properties of every railroad in the State. It will be seen that the commission is thus able to ascertain both the cost and the value of the railway properties. It is well known that the actual cost of any railway property is likely to be very greatly in excess of the amount it would cost to replace it. This is because street railway builders have not been able to start their work fully equipped with all the information there is on the subject of building street railways. Mistakes have been made, and necessarily made, in order to acquire knowledge of the art of railway building. It would be grossly inequitable to allow profits only on the sum which the railways might have expended if they had twenty years ago known as much about street railway building as they now know, and this is recognized by the Wisconsin legislation. The commission is then authorized to ascertain the receipts and operating expenses of all railroads, and the railroads are required to file with the commission copies of all contracts which they have entered into relating to rates of transportation.

One most important provision in respect to the regulation of rates is the power lodged in the commission to supervise the issuing of stocks and bonds of electric railway companies. The statute provides that no stock and no bonds can be issued without a certificate of the railroad commission expressly authorizing such issue, and that if stocks and bonds are issued without the consent of the commission, such stocks and bonds are void. This will prevent sanguine promoters from capitalizing hoped-for future earnings

and enriching themselves by passing off securities of doubtful value upon the public. It will also prevent the distress so often created by the collapse of such inflated securities. The railroad commission, having the supervision of the issue of stocks and bonds, and also having the fixing of rates, will feel, and the writer has been personally assured by the Wisconsin commissioners, do feel that such rates ought to be allowed as will give a reasonable return on any stock and bonds which they have authorized to be issued.

With this data in hand, the commission is in a position to fix an equitable and just rate, which will provide a reasonable return upon the capital legitimately invested in the enterprise (even although some of it may have been unwisely invested), and, on the other hand, a rate which will provide as cheap and adequate service to the public as can be given under the circumstances.

In the matter of fixing rates, the commission may act upon the complaint of any person, or it may act on its own initiative. The spirit of the Wisconsin law is very aptly illustrated by the provision that the action of the commission in fixing or changing rates may be invoked also *by the railway companies themselves.* That feature of the franchise contract, therefore, which attempts to fix in advance for a long period of years the rates to be charged for the service is entirely eliminated by the Wisconsin legislation, for the rates being within the control of the commission cannot, of course, be fixed by municipalities in granting franchises. The Railroad Commission may also regulate the issue of street railway transfers, a matter frequently attempted to be regulated by municipalities.

The commission is also authorized and required, upon the complaint of any party, to examine any electric railway crossing, whether it be a crossing at grade, or otherwise, with a public street or highway, or a crossing with another electric railway or steam railway, and the commission is authorized to prescribe such changes as it deems necessary to be made in these crossings, and to determine who shall pay for the cost of the changes. All fatal accidents are required to be promptly reported by the companies to the commission, and the commission is required to make prompt investigation of such accidents.

All electric railway construction outside of cities is under the direct supervision of the commission. In the first place, no such

railway can be constructed without a finding on the part of the commission that the building of such railway is a matter of public necessity and convenience. All plans for the construction of the road must then be filed with the commission, and any changes in these plans required by the commission must be made. The road must then be constructed in accordance with these plans, and before operation is commenced the commission are to examine the completed road, and, if they approve, are to grant a permit to operate.

All railroads are required to furnish reasonable and adequate service and facilities. They are required to publish their rates of fare, and no change in the fare is allowed except after notice to the commissioners and notice to the public. Proposed changes in fare can be stayed by the commission until it has had an opportunity to investigate the justice of such changes. Free transportation to state officers is forbidden. All discrimination in the matter of rates or service furnished to different patrons is absolutely prohibited under severe penalties.

The requirements of the Wisconsin legislation upon electric railways, and the provisions of that legislation as to the authorities and duties of the railroad commissioners, and particularly as to the personnel of the railroad commission and the force of assistants which they are entitled to employ, deal in a most comprehensive and logical manner with all those relations between the public and the electric railway companies which separate municipalities have so long and so unsuccessfully attempted to deal with through the municipally granted franchise contract.

The Wisconsin legislation does not in terms provide that no conditions or burdens may be placed by municipalities on the grant of street privileges. This the writer believes is an important step which should yet be taken to complete the scheme of legislation. It would be well enough to permit municipalities to impose certain conditions which arise in connection with the particular circumstances and which are not of vital importance to the railways, but all such restrictions and burdens should be limited by a provision that they shall relate, in a reasonable manner, to the operation of the railways, and should be further subject to the approval of the railroad commission. But the great advantage of the Wisconsin legislation is that practically it does eliminate from municipal interference those matters which vitally concern the operation of

electric railroads, viz., the granting of limited term franchises, and the imposing of fixed and unalterable rates of fare over a long period of years. This Wisconsin plan, therefore, while it does not directly and in terms abolish the municipally granted franchise contract, does, nevertheless, practically do away with it by lodging in the railroad commission those regulatory provisions which have been attempted to be provided heretofore in franchise contracts. As these provisions are eliminated, the franchise becomes what, in theory, it ought always to have been, a grant by the public of rights in the streets, and not a matter of bargain and dicker between municipalities and the transportation companies.

It should also be observed that the Wisconsin theory of franchises, and of dealing with electric railway rates, practically eliminates the question of compensation for franchises. So long as the rates of transportation and the quality of the service to be furnished are within the jurisdiction of the railroad commissioners, and can be fixed and changed at any time by them when such change is reasonably required, and in view of the law of the land as laid down by the Supreme Court of the United States that legitimately invested capital is entitled to a reasonable return, it can be of no advantage to a municipality to exact a payment for a franchise. This payment at once becomes a part of the legitimately invested capital, and the corporation is entitled to charge a rate which will yield a return on this item of investment, and also a rate which will in time refund it to the investor. This added item of charge the company is entitled to receive from the traveling public in rates for transportation. The result is that any moneys which the municipality may receive in return for the franchise to use the streets, are contributed indirectly by the patrons of the electric railways, and this situation is further reducible to the proposition that electric railway patrons are being taxed for the benefit of the general public. There is no escape from this conclusion, and when it is thoroughly appreciated the clamor for a cash compensation for the grant of street privileges is likely to subside.

The Wisconsin legislation does not merely state the ideas of the legislators as to what ought to be done, as legislation frequently does, but provides most completely for the carrying out of the entire plan. Severe penalties are provided for the neglect of any

railroad company to comply with any provision of the law, or with any order of the railroad commissioners. The Attorney-General and the several district attorneys throughout the State are required to prosecute for any violation of the law, or violation of any order of the railroad commissioners, when requested to do so by the commission. The whole spirit of the legislation, however, is far from arbitrary, and any company aggrieved by any order of the commission may appeal to the courts. Such orders of the commission cannot, however, be indefinitely tied up in the courts, because such appeals are given precedence over all other civil cases.

The Wisconsin Indeterminate Permit, taken in connection with the remainder of the legislation adopted by the legislatures of 1905, 1907 and 1909 for the regulation of electric railway corporations, in the opinion of the writer, provides an exceedingly satisfactory form of franchise. This result is accomplished not by the discovery in Wisconsin of some unique form of franchise, but by the application of correct economic principles to the business of electric railway transportation, by practically doing away with the granting of franchises through contracts and bargainings with municipalities, and the political corruption and short-sighted policies which have so frequently characterized such municipal contracts. While this legislation might be improved by specifically prohibiting municipalities from imposing terms on the granting of franchises, except with the approval of the railroad commissioners, it is not improbable that such will be the practical result of the legislation as it now stands.

It should be noted here that the Indeterminate Permit in relation to street railroads does not provide for freedom from competition, as does the Indeterminate Permit in relation to other public utilities in Wisconsin. The public utilities law of 1907 dealing with gas companies, electric companies, water companies, etc., provides that where there is in operation in any municipality such a company holding an Indeterminate Permit, no franchise can be granted to a competitor, nor can the city go into the business without obtaining from the railroad commissioners a certificate that such competition or municipal operation is necessary for the public good. The provisions relating to the Indeterminate Permit for street railways are substantially identical with those relating to the other public utilities, except that freedom from competition is not

granted in the case of street railways. It is not improbable that the nature of the street railway as a monopoly will be directly recognized in future legislation, either by amending the law relating to the Indeterminate Permit for street railways so as to make it conform to that relating to other public utilities, or by requiring the approval of the railroad commissioners for all street railway franchises.